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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
ROST, ANDREW J				
ART UNIT		PAPER NUMBER		
3753				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/541,084

**Applicant(s)**

TSIGONIS, ROBERT C

**Examiner**

Andrew J. Rost

**Art Unit**

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date 6/29/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1, 3, 4, 11, 14, 21, 25, 26, 30, 34, 35, 36, 37, 41 and 43 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 29, 29, 30, 33, 33, 35, 36, 36, 7, 8, 9, 10, 11, 12 and 13, respectively, of prior U.S. Patent No. 6,997,203.

This is a double patenting rejection. It is apparent that the Patent claims encompass the same scope as the application claims. Although the Application claims are not identical in wording with the Patent claims, the meanings of the differences in wordings are identical. Applicant may not obtain a second patent with a claim for the same scope as a claim that has previously been patented.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 18, 19, 20, 23, 25, 29, 31, 32, 33, 40 and 42 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14, 15, 27, 28, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 1, 2, 3, 4, 5 and 6, respectively, of U.S. Patent No. 6,997,203. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 14, 15, 27, 28, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 1, 2, 3, 4, 5 and 6 of U.S. Patent No. 6,997,203 "anticipate" Application claims 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 18, 19, 20, 23, 25, 29, 31, 32, 33, 40 and 42, respectively. Accordingly, the listed Application claims are not patentable distinct from the listed Patent claims.

5. It is apparent that the more specific Patent claims encompass the Application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, here applicant has once been granted a patent containing a claim for a specific or narrower invention, Applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer. Note that since anticipation is the epitome of obviousness, then the listed Application claims are obvious over the listed Patent claims.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-17 and 29-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Sondov (6,216,733).

Regarding claim 1, Sondov discloses a system having a distributor (1) having a plurality of outlets (7), a receptacle (3) positioned to receive liquid and defining a plurality of receptacle outlets (6) to deliver portions of liquid toward the distribution outlets and the receptacle being self-leveling (receptacle floats on liquid within the distributor, fig. 1).

In regards to claim 2, Sondov discloses the receptacle outlets to be conduits (6).

In regards to claims 3 and 4, Sondov discloses the receptacle being self-leveling via a float.

In regards to claims 5 and 6, Sondov discloses the distributor having walls or dividers (sidewalls of piping 7) to divide the distributor into chambers to receive liquid from the receptacle outlets.

In regards to claim 7, Sondov discloses the restriction of movement of the receptacle with respect to the distributor to maintain a desired orientation (restricted via end pieces of the distributor outlets being received within an opening 8 of the receptacle and whereby the receptacle is free to self-level while still maintaining a desired orientation with respect to the distributor).

In regards to claim 8, Sondov discloses a liquid portion collects in an interior of the distributor (ventilation opening 11).

In regards to claim 9, Sondov discloses the outlet receptacles to be in a plane substantially parallel to the level of liquid within the distributor (fig. 1).

In regards to claims 10 and 11, Sondov discloses at least one float (receptacle 3 floats) coupled to the receptacle to level the receptacle by action of buoyancy of the float in contact with the liquid collected in the interior of the distributor wherein the float remains level with the water level even if the distributor is tilted.

In regards to claims 12 and 13, Sondov discloses an orifice (11) to provide and suppress the movement of liquid within the distributor.

In regards to claim 14, Sondov discloses at least one float (receptacle 3 floats) to level the receptacle with the float is in contact with the liquid within the distributor wherein the buoyancy of the float maintains the receptacle in a horizontally level position.

In regards to claims 15-17, Sondov discloses the receptacle having a surface (upper surface of opening 8) that can come into contact with a surface of the distributor

(end surface of outlets 7) so that when the surfaces are in contact, the float is restricted in movement.

Regarding claim 29, Sondov discloses a system having a method of supplying a liquid (from inlet 2) to a receptacle (3) to deliver portions of liquid through a plurality of receptacle outlets (6) toward the distribution outlets (7) of a distributor (1) and the receptacle being self-leveling (receptacle floats on liquid within the distributor, fig. 1).

In regards to claim 30, Sondov discloses positioning the receptacle to receive liquid (from inlet 2), orienting outlets of the receptacle to deliver liquid toward the outlets of the liquid distributor and configuring the receptacle for movement in order to self-level (float 3).

In regards to claim 31, Sondov disclose the step of collecting liquid within the distributor (the receptacle floats on a liquid to self-level).

In regards to claim 32, Sondov discloses maintaining the receptacle outlets in a plane substantially parallel to the level of liquid within the distributor (fig. 1).

In regards to claim 33, Sondov discloses the use of a float (3) to self-level the receptacle.

In regards to claim 34, Sondov discloses the placement of distributor outlets such that an overflow of liquid would flow into the distributor outlets.

In regards to claim 35, Sondov discloses the use of a float on the receptacle to level the receptacle based on the liquid within the distributor.

In regards to claims 36 and 37, Sondov discloses the use of an orifice (11) to provide and suppress the movement of liquid within the distributor.

In regards to claims 38 and 39, Sondov discloses the use of the receptacle having a surface (upper surface of opening 8) that can come into contact with a surface of the distributor (end surface of outlets 7) so that when the surfaces are in contact, the float is restricted in movement.

8. Claims 1-8, 15, 17-22, 29-31, 36-38, 40 and 41 rejected under 35 U.S.C. 102(b) as being anticipated by Voisin (FR 2,774,109).

Regarding claim 1, Voisin discloses a system having a distributor (12) having a plurality of outlets (9, 10), a receptacle (14) positioned to receive liquid and defining a plurality of receptacle outlets (23, 24, 25, 26) to deliver portions of liquid toward the distribution outlets and the receptacle being self-leveling (receptacle is supported and pivots on a support 13).

In regards to claim 2, Voisin discloses the receptacle outlets to be conduits (9, 10).

In regards to claims 3 and 4, Voisin discloses the receptacle being self-leveling via a support.

In regards to claims 5 and 6, Voisin discloses the distributor having walls or dividers (13) to divide the distributor into chambers to receive liquid from the receptacle outlets.

In regards to claim 7, Voisin discloses the restriction of movement of the receptacle with respect to the distributor to maintain a desired orientation (restricted via the interaction of the member 14 with the distributor 12).



In regards to claim 8, Voisin discloses a liquid portion collects in an interior of the distributor (fig. 3).

In regards to claim 15, Voisin discloses a surface of the receptacle interacts with a surface of the distributor (surface interaction between support 13 and lower surface of the receptacle).

In regards to claim 18, Voisin discloses the receptacle is pivotally mounted for movement with respect to the distributor (fig. 3).

In regards to claim 19, Voisin discloses the receptacle being level by the fluid flow and gravity that affects the fluid flow.

In regards to claim 20, Voisin discloses the receptacle to have a central portion to be upwardly convex (an end portion of the receptacle has a central portion that is upwardly convex).

In regards to claim 21, Voisin discloses the receptacle to be pivotally mounted with respect to the distributor (fig. 3-6) such that the liquid is divided into predetermined portions.

In regards to claim 22, Voisin discloses the receptacle being coupled to the support so that the movement is limited and an orientation is maintained (figs. 3-6).

Regarding claim 29, Voisin discloses a system having a method of supplying a liquid (from inlet 5) to a receptacle (14) to deliver portions of liquid through a plurality of receptacle outlets (23, 24, 25, 26) toward the distribution outlets (9, 10) of a distributor (12) and the receptacle being self-leveling (receptacle pivots on a support within the distributor, fig. 3-6).

In regards to claim 30, Voisin discloses positioning the receptacle to receive liquid (from inlet 5), orienting outlets of the receptacle to deliver liquid toward the outlets of the liquid distributor and configuring the receptacle for movement in order to self-level (pivots on support 13).

In regards to claim 31, Voisin discloses the step of collecting liquid within the distributor (fig. 3).

In regards to claims 36 and 37, Voisin discloses the use of a baffle (13) to provide and suppress the movement of liquid within the distributor.

In regards to claim 38, Voisin discloses the use of the receptacle having a surface (surface of the support 13) that contacts a surface of the distributor (undersurface) so that when the surfaces are in contact, the receptacle is restricted in movement.

In regards to claims 40 and 41, Voisin discloses the use of a balanced receptacle (receptacle is balanced on support 13) that is balanced with respect to the distributor.

9. Claims 1-9, 18, 19, 21, 23-32 and 40-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Berge (WO 03/096795 A).

Regarding claim 1, Berge discloses a system having a distributor (8) having a plurality of outlets (3), a receptacle (1) positioned to receive liquid and defining a plurality of receptacle outlets (4) to deliver portions of liquid toward the distribution outlets and the receptacle being self-leveling (receptacle is suspended within the distributor, fig. 1).

In regards to claim 2, Berge discloses the receptacle outlets to be conduits (3).

In regards to claims 3 and 4, Berge discloses the receptacle being self-leveling via a suspension member.

In regards to claims 5 and 6, Berge discloses the distributor having walls or dividers (sidewalls of piping 3) to divide the distributor into chambers to receive liquid from the receptacle outlets.

In regards to claim 7, Berge discloses the restriction of movement of the receptacle with respect to the distributor to maintain a desired orientation (restricted via end pieces receptacle outlet 4 being received within distributor outlets 3).

In regards to claim 8, Berge discloses a liquid portion collects in an interior of the distributor (opening of the outlets 3 are located within the distributor).

In regards to claim 9, Berge discloses the outlet receptacles to be in a plane substantially parallel to the level of liquid within the distributor (fig. 2).

In regards to claim 18, Berge discloses the receptacle to be pivotally mounted (pivotally mount via a suspension 7).

In regards to claim 19, Berge discloses the outlet receptacles to be in a plane substantially parallel to the level of liquid within the distributor (fig. 2).

In regards to claim 21, Berge discloses the receptacle to be pivotally mounted (pivotally mount via a suspension 7) wherein the outlet receptacles are in a plane substantially parallel to the level of liquid within the distributor (fig. 2).

In regards to claim 23, Berge discloses the receptacle to be pivotally suspended (by suspension 7).

In regards to claim 24, Berge discloses the restriction of movement of the receptacle with respect to the distributor to maintain a desired orientation (restricted via end pieces receptacle outlet 4 being received within distributor outlets 3).

In regards to claim 25, Berge discloses the outlet receptacles to be in a plane substantially parallel to the level of liquid within the distributor (fig. 2).

In regards to claim 26, Berge discloses the receptacle to be pivotally mounted (pivotally mount via a suspension 7) wherein the outlet receptacles are in a plane substantially parallel to the level of liquid within the distributor (fig. 2).

In regards to claims 27 and 28, Berge discloses the distributor having walls or dividers (sidewalls of piping 3) to divide the distributor into chambers to receive liquid from the receptacle outlets.

Regarding claim 29, Berge discloses a system having a method of supplying a liquid (from inlet 2) to a receptacle (1) to deliver portions of liquid through a plurality of receptacle outlets (4) toward the distribution outlets (3) of a distributor (8) and the receptacle being self-leveling (receptacle is pivotally suspended within the distributor, fig. 1).

In regards to claim 30, Berge discloses positioning the receptacle to receive liquid (from inlet 2), orienting outlets of the receptacle to deliver liquid toward the outlets of the liquid distributor and configuring the receptacle for movement in order to self-level (suspension 7).

In regards to claim 31, Berge disclose the step of collecting liquid within the distributor (liquid is collected within the opening of the outlets 3 which are located within the distributor).

In regards to claim 32, Berge discloses maintaining the receptacle outlets in a plane substantially parallel to the level of liquid within the distributor (fig. 1).

In regards to claims 40-43, Berge discloses self-leveling the receptacle (via a pivotally mounted suspension member 7) so that the receptacle is level when the distributor is not (fig. 2) such that gravity maintains the receptacle in a horizontally level orientation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Rost whose telephone number is 571-272-2711. The examiner can normally be reached on 7:00 - 4:30 M-Th and 7:00 - 12:00 Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. J. R./  
Examiner, Art Unit 3753  
September 28, 2008

/Stephen M. Hepperle/  
Primary Examiner, Art Unit 3753